IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 32/2003.

Shri Mohamed Hussain
Hasham Kachhi,
44 years old, resident of
Chiplun, Industrial Development
Officer, Panchayat Samitee Office,
Chiplun, resident of 121,
Mangalwar Peth,
Karad, District Satara,
Maharashtra State. ... Petitioner.

VERSUS

Smt. Mariambi Kachhi,
aged 44 years old,
resident of House No.382,
Rua Saudades, Margao,
South District, Taluka Salcete,
Margao Goa 403 601. ... Respondent.

Mr. A.M. Makander, Advocate for the Petitioner.

Mr. A.F. Diniz, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATE: 3RD OCTOBER, 2003.

ORAL JUDGMENT:

The Applicant has filed the present Criminal Revision Application challenging the Judgment dated 17th October, 2002 passed by the learned Sessions Judge, South Goa, Margao, allowing the Criminal Revision Application filed by the respondent herein and granting maintenance of Rs.500/- to the respondent herein from the date of her application i.e. 2.8.1985.

2. The facts in brief as are necessary for the

decision of this Revision Application are set out hereunder.

3. The respondent herein filed an application under Section 125 seeking maintenance for herself and for her minor son. This application came to be filed on 2.8.1985. The respondent herein examined nine witnesses and the evidence which commenced on 29.3.1986 concluded on 7.6.1994. Thereafter the applicant herein/husband examined himself on 21.3.1995 and completed the examination of the other witnesses on 16.4.1996. The learned Trial Court by its order dated 30.8.2001 dismissed the plea for maintenance of the respondent herein, but however, granted maintenance to the minor child. After protracted legal battle lasting for nearly 16 years, since the respondent herein was denied maintenance by the learned Trial Court, the respondent herein filed Criminal Revision Application No.74/2001 before the Sessions Judge at Margao. The learned Sessions Judge, by his order referred to above, allowed the Criminal Revision Application filed by the respondent/wife herein and granted maintenance to her at the rate of Rs.500/- per month with effect from 2.8.1985. The learned Revisional Court found that the respondent/wife had good and sufficient cause for not staying with the husband as the husband had contracted a second marriage

on 24.4.1987. According to the learned Revisional Court, the learned Trial Magistrate had completely lost sight of this part of the evidence. In fact, the learned Sessions Judge in paragraph 13 of his judgment, has held that the learned Magistrate had failed to reproduce at least the important facts stated by the witnesses and had also omitted to marshal their evidence. Therefore the learned Revisional Court examined the evidence and re-appreciated the same. The learned Sessions Judge was conscious of the fact that it was exercising revisional jurisdiction. However, since the learned Trial Court had not appreciated the evidence and had overlooked certain important aspects, the learned Sessions Judge re-appreciated the evidence and recorded his finding.

4. The Applicant/husband being aggrieved by the order of the Revisional Court, has invoked the jurisdiction of this Court under Section 397 of the Code of Criminal Procedure. At the outset, it is stated before me that the finding of the learned Sessions Judge regarding the performance of the second marriage by the Applicant is a finding which is not based on any legal evidence. A reference may usefully be made to the evidence of A.W.9 Ibrahim Khan Mis Birla Khan who had performed the second marriage of the respondent at Yetemal on 24.4.87. A.W.9 is the priest

at the Masjid at Yetemal. He has produced on record the register of Nikah maintained by the Masjid and according to him the marriage of the applicant herein was performed with one Juveraz Bi and the same has been registered. He has placed on record a xerox copy of the same which is at Exh.A.W.9/A. He has also identified the signature of the applicant herein. He has also stated that one Abdul Baha Saikh Babu Neha was a witness to the marriage. The respondent herein had also examined A.W.6 Abdula Shaik Babumina who has stated that he was a witness to the second marriage of the applicant herein. In the cross-examination he has denied the suggestion that he had neither signed as a witness nor he had in fact witnessed the performance of the second marriage of the applicant herein. It may incidentally be mentioned that A.W.9 Ibrahim the priest who had performed the second marriage of the applicant herein was not cross-examined on behalf of the applicant herein. Thus the evidence has gone unchallenged. The learned Revisional Court after appreciation of the evidence, according to me, therefore, has not committed any error of jurisdiction in holding that the respondent had performed a second marriage on 24.4.87.

5. It is next urged before me that the application under Section 125 does not contain any recital about

the "inability of the wife to maintain herself". This aspect has been examined by the learned Revisional Court who has come to the conclusion that admittedly the wife did not have any independent source of earning and the fact that she had filed an application under Section 125 seeking maintenance was a pointer to the fact that she was unable to maintain herself.

6. With the assistance of the learned counsel appearing on behalf of the parties, I have perused the judgment of the learned Revisional Court as well as I have perused the deposition of the witnesses. According to me, the judgment of the learned Revisional Court cannot be faulted. There is no error of jurisdiction committed by the learned Revisional Court and, as such, this Court cannot re-appreciate the evidence in revision to come to a different conclusion. The learned Revisional Court while recording the above finding, has not overstepped its jurisdiction and therefore according to me there is no merit in this Criminal Revision Application which is dismissed with no order as to costs.

P. V. HARDAS, J.

sl.